

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. No. 98-52

A-R CABLE SERVICES, INC.
A-R CABLE PARTNERS
CABLEVISION OF FRAMINGHAM, INC.
CHARTER COMMUNICATIONS
GREATER WORCESTER CABLEVISION,
INC.
MEDIAONE OF MASSACHUSETTS, INC.
MEDIAONE OF PIONEER VALLEY, INC.
MEDIAONE OF SOUTHERN NEW
ENGLAND, INC.
MEDIAONE OF WESTERN NEW
ENGLAND, INC.
MEDIAONE ENTERPRISES, INC.
MEDIAONE OF NEW ENGLAND, INC.
PEGASUS COMMUNICATIONS
TIMER WARNER CABLE

Complainants,

v.

MASSACHUSETTS ELECTRIC
COMPANY

Respondent.

**MOTION OF MASSACHUSETTS ELECTRIC COMPANY
TO COMPEL PRODUCTION OF DISCOVERY**

Pursuant to the Department's Procedural Rules, 220 C.M.R. §1.00 *et seq.*, and the Ground Rules issued by the Hearing Officer in this proceeding on June 23, 1998, Massachusetts Electric Company (Mass. Electric) hereby moves that the Department order the Complainants in this

proceeding to produce complete and responsive data responding to certain data requests issued in good faith by Mass. Electric.

I. Background

This proceeding concerns Mass. Electric's pole attachment rates for service to Complainants, cable television companies attaching their wires to Mass. Electric poles. On June 23, 1998, the Hearing Officer conducted a hearing establishing procedural Ground Rules, including the conduct of discovery and the means for resolving discovery disputes. Mass. Electric had begun responding to Complainants' data requests prior to the June 23 hearing and has since commenced serving data requests upon Complainants through their counsel.

Complainants have objected to answering certain of Mass. Electric's data requests on grounds of relevancy. Despite the good faith efforts of Mass. Electric's counsel to clarify the purpose, legitimacy and relevance of the data requests deemed objectionable by Complainants, and notwithstanding Mass. Electric's offer to eliminate one section of a specified data request, counsel for the Complainants continues to refuse to provide certain requested data. Under Rule 26 of the Massachusetts Rules of Civil Procedure, which the Department has adopted as a benchmark for discovery disputes, Mass. Electric has a legitimate right to obtain the requested data in a timely manner to complete the record in this proceeding and to prepare for hearing.

II. Disputed Data Requests

The data requests (including Complainants' objections) for which Mass. Electric seeks an Order to Compel are attached to this Motion as Exhibit 1. In each case, Complainants contend

that the information sought is not relevant to the determination of a reasonable rate for Mass. Electric's pole attachment service.

A. MECO-5

MECO-5 seeks specific information regarding construction of communications lines and overloading on cables or wires attached to Mass. Electric conduits and poles. This data request is derived from CABLE-10, CABLE-17 and CABLE-18, which Mass. Electric answered fully for Complainants, as shown in Exhibit 2. Nonetheless, Mass. Electric agrees with Complainants that conduit rates are not at issue in this proceeding and Mass. Electric agrees to withdraw that element of MECO-5. Mass. Electric now seeks to compel production of the remaining requested data, also as required under Mass. Electric's standard agreements for pole attachments. See Exhibit 3. Furthermore, Complainants may only use Mass. Electric's poles for cable service, as defined in §602 of the Cable Communications Act of 1984 (47 U.S.C. § 521-559) under the agreements in effect. Any other use could necessitate the development of a different rate and license agreement for such uses. Mass. Electric seeks to ascertain whether Complainants are taking only those services permitted under their agreements at the rate to be set in this proceeding. This information sought is directly relevant to the terms, conditions and rates at issue in this case.

B. MECO-6 , MECO-8, MECO-11 and MECO-13

Complainants object to MECO-6, MECO-8, MECO-11 and MECO-13 which request data on finances, corporate relationships, the relative significance of pole attachments rates to

cable television rates and certain business expenses of Complainants. Mass. Electric requested this information to evaluate claims that Complainants may make about the impact of the pole attachment rates on their financial operations. While Complainants are quick to point out the "small fraction" they contribute to utility revenues, they refuse to disclose the scope of their businesses and the impact of pole attachment rates on their businesses. Mass. Electric Complainants provided and the Department referred to this type of data in Boston Edison's recent pole attachment rate case. *Cablevision, et. al.*, DPU/DTE 97-82 at 12. The request is designed to provide information that could be relevant to the issues revised in this proceeding. The Department should compel its production.

C. MECO-10 and MECO-16

MECO-10 and MECO-16 respectively seek information from Complainants' records regarding the number of attachments they have made to Mass. Electric poles and the date of their first attachments. Complainants have referred to their invoices from Mass. Electric as indicia of their number of attachments without confirming the accuracy or the accuracy of the billing date. Moreover, the Complaints have refused to reveal their dates of first attachment. They have also objected to providing additional information regarding their attachment records as irrelevant.

The information sought by Mass. Electric in MECO-10 has a direct bearing on the application of the rate to be determined in this proceeding. Under Mass. Electric's standard agreement for pole attachments, a customer bears the obligation to seek a specific license for each pole to which it desires to attach. See Exhibit 3. Nonetheless, Mass. Electric has sound reason to believe that some Complainants have not sought sufficient licenses. Mass. Electric's agreements

with Complainants also contain an express provision for billing unlicensed attachments back to the date of first attachment. *Id.* The information sought by Mass. Electric in MECO-10 and MECO-16 is critical to determining the proper number of licenses and poles to be billed to each Complainant as well as the date from which rates for unlicensed attachments should be billed.

In order to assure the proper reconciliation and billing of the rates ultimately determined in this proceeding, the Department should order Complainants to respond to MECO-10 and MECO-16. Complainants cannot seek to evade their contractual obligation or their obligation under 220 C.M.R. §1.06(c) by merely claiming irrelevance. The Complainants' compliance with the terms, conditions, and contractual requirements of the rate are directly relevant to this proceeding. Their refusal to provide information that is central to the fair and accurate administration of the pole attachment rates set by the Department should not be allowed. The Department should require the Complainants to provide the requested information.

III. Conclusion

Mass. Electric's data requests meet the appropriate standards for discovery under Rule 26 of the Massachusetts Rules of Civil Procedure, the Department's Rules of Procedure and the Ground Rules established by the Hearing Officer in this proceeding. Prompt and meaningful responses to the discovery are necessary for the preparation of Mass. Electric's case and in the interest of determining and applying a just and reasonable rate for all of Complainants' attachments to Mass. Electric poles. Accordingly, the Department should order Complainants to comply fully and expeditiously to the data requests described above.

In the interest of conserving limited Department resources, Mass. Electric suggests that

the parties agree to waive a hearing on this Motion and that the Department proceed to issue its decision on the matters described herein based on Mass. Electric's Motion to Compel and Complainants' Answer hereto.

Respectfully submitted,

Paige Graening
Thomas G. Robinson
Counsel to Massachusetts Electric Company
25 Research Drive
Westborough, MA 01582
508-389-3074 (phone)
508-389-2463 (fax)